

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defendants.

No. C70-9213 RSM

Subproceeding 83-6
Subproceeding 90-1

**JOINT STIPULATION TO DISMISS
WITHOUT PREJUDICE AND
ORDER**

The undersigned parties jointly submit this stipulation to dismiss consolidated subproceeding 83-6 and 90-1, without prejudice and under Federal Rule of Civil Procedure 41(a)(2), pursuant to the Court's Order Directing the Filing of a Stipulated Dismissal Without Prejudice of April 1, 2024 (Dkt. 411), in which the Court directed the parties to "submit a stipulated dismissal of this subproceeding setting forth terms for dismissal without prejudice within thirty (30) days." Below are set forth the terms of the proposed stipulation to dismiss the consolidated subproceeding without prejudice, in conformance with the Court's April 1, 2024, Order.

The Court's April 1, 2024, Order succinctly summarized the "lengthy and complex" history of this consolidated subproceeding, *id.* at 1-2, based on the procedural history in the parties' Joint Status Report and Joint Motion to Extend Stay, dated March 7, 2024 (Dkt. 408). In relevant part, after many years of inactivity in the consolidated subproceeding, the Court issued a

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No. C70-9213, Subproceeding 83-6 (Accounting for Non-Treaty Catch)

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1 minute order on February 6, 2024, in which the Court directed the parties to submit a Joint Status
 2 Report within 30 days (Dkt 407). On March 7, 2024, the parties submitted the Joint Status
 3 Report and Joint Motion for Stay. The Court denied the motion in its April 1, 2024, Order, and
 4 instead directed the parties to “submit a stipulated dismissal of this subproceeding setting forth
 5 terms for dismissal without prejudice within thirty (30) days. Dkt. 411 at 3. The Order also
 6 provided that “[i]f the parties cannot agree on such [stipulated dismissal], the Court will enter a
 7 dismissal with the relevant terms set forth in the prior stipulation dated May 16, 1988.” *Id.*

9 The undersigned parties conferred and reached agreement on the instant stipulation to
 10 dismiss without prejudice. The undersigned parties are all 24 plaintiff and plaintiff-intervenor
 11 tribes,¹ all three defendant and defendant-intervenor states,² and plaintiff the United States.
 12 Given the consensus reached by all of the parties to the subproceeding, the following stipulation
 13 to dismiss without prejudice, which includes, *inter alia*, terms that would allow reinstatement of
 14 this consolidated subproceeding and preserve all interventions granted by the Court, is submitted
 15 in conformance with the Court’s April 1, 2024, Order.

17 **Stipulation to Dismiss Without Prejudice**

18 Based on the foregoing, the undersigned parties jointly stipulate to dismiss this
 19 consolidated subproceeding, without prejudice, under Federal Rule 41(a)(2) and further stipulate
 20 to the following terms:

- 22 1. Subproceedings 83-6 and 90-1 are dismissed without prejudice, and the dismissal

23 ¹ Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm
 24 Springs Reservation of Oregon, Hoh Tribe, Jamestown S’Klallam Tribe, Lower Elwha Klallam
 25 Tribe, Lummi Nation, Makah Indian Tribe, Muckleshoot Indian Tribe, Nez Perce Tribe,
 26 Nisqually Indian Tribe, Nooksack Indian Tribe, Port Gamble S’Klallam Tribe, Puyallup Tribe of
 Indians, Quileute Indian Tribe, Quinault Indian Nation, Sauk-Suiattle Indian Tribe, Skokomish
 Indian Tribe, Squaxin Island Tribe, Stillaguamish Tribe of Indians, Suquamish Indian Tribe,
 Swinomish Indian Tribal Community, Tulalip Tribes, Upper Skagit Indian Tribe, and Yakama
 Nation.

² States of Washington, Oregon, and Alaska.

1 does not operate as an adjudication on the merits.

2 2. The dismissal is without imposition of terms or further conditions on plaintiffs per
3 Fed. R. Civ. P. 41(d) either now or in the future.

4 3. The dismissal is without imposition of statutory costs, attorneys fees, or expenses
5 incurred by defendants per Fed. R. Civ. P. 41(d) either now or in the future.

6 4. This consolidated subproceeding may be reinstated by any party, at any time, without
7 precondition or limitation.

8 5. The entire record of this consolidated subproceeding, including the orders granting
9 limited intervention for the purpose of this consolidated subproceeding to the Confederated
10 Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Umatilla
11 Indian Reservation, the Nez Perce Tribe, the State of Oregon (Dkt. 9981, January 6, 1984), and
12 the State of Alaska (Dkt. 14705, January 27, 1995), shall be refiled and given full effect if this
13 action is reinstated.

14 6. Within 60 days of reinstatement, plaintiff tribes will file an amended or
15 supplemental Request for Determination which shall, *inter alia*, summarize the state of these
16 subproceedings and update the Request where appropriate.

17 7. If this consolidated subproceeding is reinstated, or if an action or new
18 subproceeding is filed based on or including the same claim as this consolidated subproceeding,
19 the parties waive the defense that the consolidated subproceeding as of the time of dismissal no
20 longer presented a case or controversy and waive objections as to waiver, laches, or estoppel that
21 are based upon this dismissal of this consolidated subproceeding.

22 8. Nothing herein shall preclude any party from filing or maintaining any action to
23 challenge management or accounting methods of any fish runs.
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1 Dated: May 1, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2024, I electronically filed the foregoing Joint Stipulation to Dismiss Without Prejudice and Proposed Order with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties in this matter who are registered with the Court's CM/ECF filing system.

s/ Laura Bartholet
Laura Bartholet, Paralegal

ORDER

For good cause shown, the Joint Stipulation to Dismiss Without Prejudice is GRANTED, subject to the terms set forth therein, which this Court considers proper. This stipulated dismissal does not operate as an adjudication on the merits of the action or any related action. This consolidated subproceeding is DISMISSED WITHOUT PREJUDICE under Federal Rule of Civil Procedure 41(a)(2).

IT IS SO ORDERED.

DATED this 2nd day of May, 2024.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE